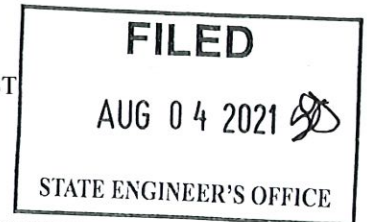


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 90712
FILED BY 3PL Operating Inc.
ON May 26, 20 21

PROTEST



Comes now U.S. Bureau of Indian Affairs

Printed or typed name of protestant

whose post office address is 2600 N. Central Ave., 4th Floor, Phoenix, AZ 85004

Street No. or PO Box, City, State and ZIP Code

whose occupation is Federal Government Agency

and protests the granting

of Application Number 90712, filed on May 26, 20 21

by 3PL Operating Inc. for the

waters of Underground situated in Nye

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:


See Exhibit A, attached

THEREFORE the Protestant requests that the application be Denied

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Pursuant to NRS 53.045, I hereby certify, under penalty of perjury of the laws of the State of Nevada, that the foregoing is true and correct.

Signed 
Agent or protestant
Bryan Bowker, Regional Director
Printed or typed name, if agent
Address 2600 N. Central Ave., 4th Floor
Street No. or PO Box
Phoenix, AZ 85004
City, State and ZIP Code
602-379-6000
Phone Number
Bryan.Bowker@bia.gov
E-mail

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**+ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.**

Exhibit A

Information In Support of the Protests of the U.S. Bureau of Indian Affairs
In the Matter of Nevada Water Right Application for Permit Nos. 90712 Through 90751

On May 26, 2021, 3PL Operating Inc. (Applicant) filed a total of forty *Applications for Permits to Appropriate the Public Waters of the State of Nevada* in Railroad Valley- North (No. 173B) hydrographic area (Basin). The Application for Permit Nos. 90712 through 90751, inclusive, each requests to withdraw up to a diversion rate of 3.9 cubic feet per second (cfs) of subsurface brine solution for the extraction and processing of lithium. The Applicant proposes to drill 40 wells to pump an estimated total 101,400 acre-feet per year (afy) of brine solution of which about 18% (18,500 afy) will be consumptively used. The remaining brine solution will be injected back into the source subsurface formations. The proposed project is located in the same Basin as the Duckwater Indian Reservation (Reservation), about 25 miles south of the Reservation (see enclosed map).

The Reservation is situated along Duckwater Creek and consists of irrigated and range lands in the northern part of the Basin. The Reservation was established under the Proclamation of November 13, 1940 with the acquisition of several area ranches. The United States purchased these ranches and associated water rights to be held in trust for the Duckwater Shoshone Tribe (Tribe). The Reservation's size was approximately 3,855 acres up until 2016, at which time it was increased by an additional 31,229 acres of Bureau of Land Management lands, with the passage of the Nevada Native Nations Land Act (P.L. 114-232). Currently, the U.S. Bureau of Indian Affairs (BIA) is the legal owner of approximately 35,000 acres of Indian trust land and associated water rights. The Tribe also utilizes rangeland located on BLM land in the Pancake Range Use Area which borders the Reservation to the west.

Water resources on the Reservation consist primarily of Duckwater Creek, large thermal springs (Big and Little Warm Springs), numerous smaller springs, domestic and irrigation wells. Big Warm Springs is the primary source of Duckwater Creek and with the other smaller springs discharge approximately 11,000 afy (Water Resources Reconnaissance Report No. 60). The Railroad Valley springfish is a threatened species that is native to the Big and Little Warm Springs on the Reservation. The Reservation is underlain by unconsolidated and consolidated alluvial and basin-fill material which yields groundwater to most wells on the Reservation and the Basin. Carbonate rocks occur at depth and are likely the source for the thermal springs. Like in many basins in Nevada, there is likely a hydraulic connection between the basin fill and carbonate aquifer systems where possible impacts can occur due to pumping in one or the other aquifer systems. To date there has not been much groundwater development in the Basin so the extent and possible impacts to the groundwater system is relatively unknown.

Through the acquisition of the various ranches, the Tribe/U.S. has acquired state-based water rights, including decreed, vested and certificated water rights. Water rights of Duckwater Creek

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were adjudicated by the Averill Decrees of 1909 and 1910. The Tribe has over 10 cfs of decreed water rights from the Duckwater Creek system. The Tribe/U.S. also acquired several state certificated stock water rights for springs in the Pancake Range Use Area, some of which are outside of the Basin boundary.

The Tribe has federal reserved water rights that were reserved and secured by the United States at the time of the creation of the reservation, with a priority date no later than the creation of the reservation, in a quantity sufficient (both surface and groundwater) to fulfill the purposes of the reservation, and to satisfy the present and future needs of the reservation. See *Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*, 373 U.S. 546 (1963) (*Arizona I*); and *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9th Cir. 1981). Tribal water rights are not limited to water sources that originate on tribal lands. *United States v. Ahtanum Irrigation District*, 236 F. 2d 321 (9th Cir. 1956). Federal reserved rights extend to groundwater to the extent groundwater is necessary to accomplish the purpose of a reservation. Holders of federal reserved rights enjoy greater protection from groundwater pumping than do holders of state law rights to the extent that greater protection may be necessary to maintain sufficient water to accomplish the purpose of a reservation. *In Re The General Adjudication of All Rights to Use Water in the Gila River System and Source*, 195 Ariz. 411, 989 P.2d 739 (Ariz. Sup. Ct. 1999) (*en banc*). Federal reserved water rights may be protected against off-reservation groundwater diversions, which are hydrologically interrelated with the reserved waters. *Cappaert v. United States*, 426 U.S. 128 (1976). The essential purpose of Indian reservations is to provide Native American people with a permanent home, an abiding place, and a livable environment. *In Re The General Adjudication of All Rights to Use Water in the Gila River System and Source*, 35 P.3d 68 (Ariz. Sup. Ct. 2001) (*en banc*), citing *Winters* and *Arizona I*.

The BIA on behalf of the Duckwater Shoshone Tribe, protests the granting of Application Nos. 90712 through 90751, inclusive, on the following grounds:

1. The Applicant does not provide sufficient information and data to substantiate their anticipated production rate of over 100,000 afy of brine solution and the determination of the expected consumptive use of 18,500 afy. It is unclear if fresh water (other unidentified water source) will be needed in the extraction of the lithium or in the daily operation of the plant facility. An accounting of all water sources, uses and quantities in the daily plant operations would help substantiate the proposed water production rates.
2. There is insufficient information provided in the application to assess the potential effects to the Basin's fresh groundwater resources, including the Tribe's, that may result from the proposed pumping and reinjection activities of the Applicant. Because of the relatively new process of mining brine solution for lithium and the Basin's lack of known hydrologic properties at depth, a hydrogeologic study should be conducted by the Applicant. The study would help determine the viability of producing and reinjecting the brine solutions at the proposed rates, the cumulative

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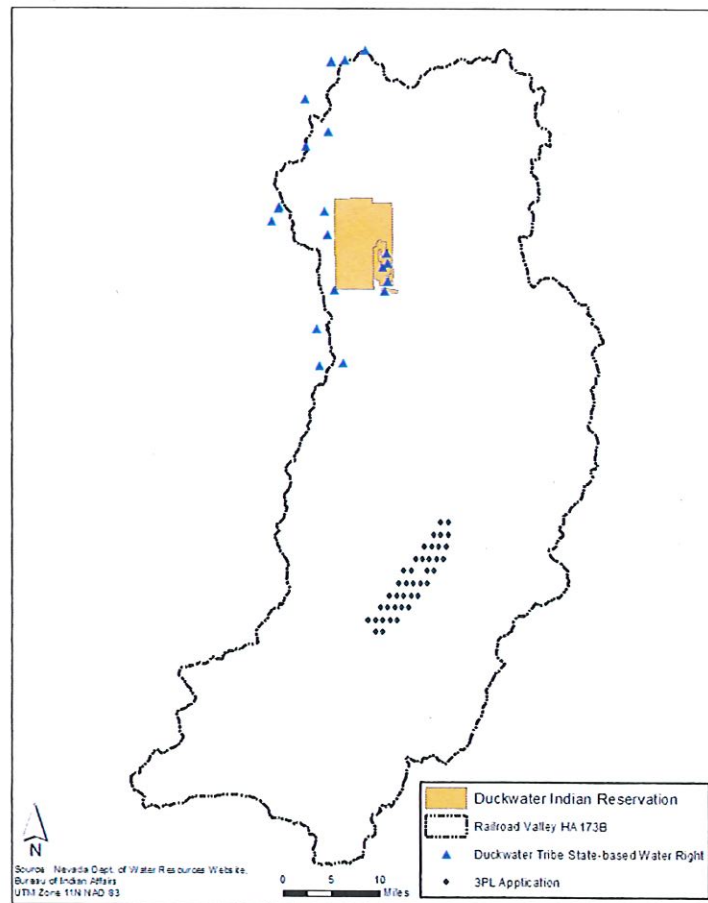
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WATER RESOURCES DIVISION

drawdown effects of pumping at the proposed rates and any potential impacts to existing water rights.

3. The Applicant fails to provide a timeline on the expected startup date and the estimated project life span of their proposed project.
4. This amount of groundwater production (and injection) has not occurred in Railroad Valley and so the magnitude of the proposed Project's activities will likely have unforeseen problems and impacts (water quality and quantity) to the hydrologic system of the Basin and these impacts (short and long term) may be difficult to mitigate due to the scale of the Project. Therefore, a monitoring and mitigation program is recommended to help identify and prevent adverse impacts that may occur to the Tribe's springs and wells and the habitat for the threatened Railroad Valley springfish.

The BIA reserves the right to amend and supplement its exhibit and protests of Application for Permit Nos. 90712 through 90751 to the extent that more information relevant to the protest becomes available.



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